Court No.3

Criminal Revision No. 123/2002

Vijay Dahiya …….Revisionist.

Versus

Smt. Ashu Dahiya …….Respondent.

Hon'ble Irshad Hussain, J.

This is a revision against the judgment and order dated 10-10-2002 allowing the petition exparte filed by the respondent under section 125 of Criminal Procedure Code and granting her maintenance at the rate of Rs.5000/- per month.

Heard Sri Arvind Vashishtha learned counsel for the petitioner and learned A.G.A.

The contention of the petitioner is that he was not served with the notice of the petition and the learned Principal Judge, Family Court without any verification from the record held that the petitioner was served with the notice and order to this effect was passed on 10-10-2002 and on this very day the petition was decided after taking on record the affidavit of the respondent-wife.

In support of the submission that the petitioner was not served attention has been drawn to, Annexure-2, to the rejoinder affidavit which is Xerox copy of the envelope containing the notice sent to the petitioner. There is endorsement on the envelope to the effect that on various dates between 3-10-2002 to 9-10-2002 the addressee namely the petitioner Vijay Dahiya was not found present on the address and finally the envelope returned back on 10-10-2002 by the post-man with this endorsement. From this it is evident that the notice was not in fact served on the petitioner and the learned Principal Judge without perusing the record of the case made an order that the O.P. stands served. There was no occasion in a situation like this to proceed against the petitioner and he has been deprived of his right

to put forward his case and resist the petition under section 125 of Criminal Procedure Code on merit.

In view of above the exparte judgment and order dated 10-10-2002 is set aside and the matter is remanded to the Principal Judge, Family Court to decide the case under section 125 of Criminal Procedure Code afresh expeditiously within a period of 3 months after affording opportunity to the parties to adduce evidence after the written statement is filed by the petitioner husband. Till the disposal of the petitioner under section 125 of Criminal Procedure Code on merit the petitioner-husband shall continue to pay interim maintenance at the rate of Rs. 2000/- per month. The learned Principal Judge, Family Court shall not be guided of the quantum of interim maintenance as fixed by this Court and the same shall be considered on merit considering the income of the parties. The revisionist-husband shall file the written statement in 15 days from today and put in appearance before the Principal Judge, Family Court.

With these observations the revision petition is finally disposed of.

(Irshad Hussain, J.)

Dated: 5-9-2003

ISB